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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 VICTOR PEREZ LUNA,)
13 Plaintiff,) Case No.: 2:21-cv-01376-BNW
14 vs.)
15 KILOLO KIJAKAZI,) **UNOPPOSED MOTION FOR A FIRST
Acting Commissioner of Social Security,) EXTENSION OF TIME TO FILE CERTIFIED
16 Defendant.¹) ADMINISTRATIVE RECORD AND ANSWER;
) DECLARATION OF JEBBY RASPUTNIS
) (**FIRST REQUEST**)
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25 ¹ Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule
26 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi should be substituted, therefore, for
Andrew Saul as the defendant in this suit. No further action need be taken to continue this suit by reason
of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

1 Defendant, Kilolo Kijakazi, Acting Commissioner of Social Security (the “Commissioner”), by
2 and through his undersigned attorneys, hereby moves for a first sixty-day extension of time to file the
3 Certified Administrative Record (CAR) and answer to Plaintiff’s Complaint. The CAR and answer to
4 Plaintiff’s Complaint are due to be filed by October 11, 2021.

5 Defendant makes this request in good faith and for good cause, because the CAR, which must be
6 filed with the Answer and is necessary to adjudicate the case, is not yet available. The public health
7 emergency pandemic caused by COVID-19 has significantly impacted operations in the Social Security
8 Administration’s Office of Appellate Operations (OAO) in Falls Church, Virginia, which is responsible
9 for producing the CAR that must be filed with the Answer, per 42 U.S.C. §§ 405(g) and (h). As detailed
10 in the attached declarations from Jebby Rasputnis, Executive Director of the OAO, beginning mid-March
11 2020, OAO restricted physical access to the Falls Church building, which impacted the production of
12 CARs because physical access was previously required to produce CARs. OAO has since developed and
13 employed a new business process to produce CARs. Much of the difficulty in producing CARs stemmed
14 from the old process of transmitting hearing recording to vendors for transcription, how the vendors
15 transcribed the recordings, and how the vendors provided the completed transcripts to OAO. OAO
16 changed this process by reworking how the audio files are submitted, seeking additional vendor capacity,
17 and increasing in-house transcription capacity. With these changes, OAO is now able to produce more
18 than 700 transcripts a week, a significant increase over the pre-COVID-19 average of 300-400 hearing
19 transcripts a week.

20 Despite these improvements, OAO still faces a significant backlog of cases due to the combined
21 effects of pandemic-related disruption and a marked increase in district court filings (up almost 800 cases
22 per month, a 54% increase). Overall, the timeframe for delivering a CAR in an individual case has
23 improved. Because of this, OAO is making progress in its backlog of cases. At the end of January 2021
24 OAO had 11,111 pending cases. As of August 9, 2021, OAO had 3,760 pending cases, representing a
25 decrease in our backlog of nearly 7,350 cases over seven months. OAO continues to work on increasing
26 productivity by collaborating with our vendors and searching out and utilizing technological

1 enhancements. Defendant asks this Court for its continued patience as OAO works to increase its
2 efficiency and production of CARs, reduce the current backlog, and address rising court case filings.
3 Counsel for Defendant further states that the Office of General Counsel (OGC) is monitoring receipt of
4 transcripts on a daily basis and is committed to filing Answers promptly upon receipt and review of the
5 administrative records.

6 Given the volume of pending cases, Defendant requests an extension in which to respond to the
7 Complaint until December 10, 2021. If Defendant is unable to produce the certified administrative record
8 necessary to file an Answer in accordance with this Order, Defendant shall request an additional
9 extension prior to the due date.

10 On October 4, 2021, the undersigned conferred with Plaintiff's counsel, who has no opposition to
11 the requested extension. It is therefore respectfully requested that Defendant be granted an extension of
12 time to file the CAR and answer to Plaintiff's Complaint, through and including November 9, 2021.

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15 Dated: October 4, 2021

Respectfully submitted,

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17 CHRISTOPHER CHIOU
Acting United States Attorney

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19 /s/ Daniel P. Talbert
DANIEL P. TALBERT
Special Assistant United States Attorney

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21 **Order**

22 **IT IS SO ORDERED**

23 **DATED:** 10:16 am, October 05, 2021

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BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My
3 business address is 160 Spear Street, Suite 800, San Francisco, California 94105. I am not a party to the
4 above-entitled action. On the date set forth below, I caused service of **UNOPPOSED MOTION FOR**
5 **A FIRST EXTENSION OF TIME TO FILE CERTIFIED ADMINISTRATIVE RECORD AND**
6 **ANSWER; DECLARATION OF JEBBY RASPUTNIS** on the following parties by electronically
7 filing the foregoing with the Clerk of the District Court using its ECF System, which provides electronic
8 notice of the filing:

9 Leonard Stone
10 lstone@shookandstone.com

11 Marc V. Kalagian
12 marc.kalagian@rksslaw.com

13 Attorneys for Plaintiff

14 I declare under penalty of perjury that the foregoing is true and correct.

15 Dated: October 4, 2021

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17 */s/ Daniel P. Talbert*
18 DANIEL P. TALBERT
19 Special Assistant United States Attorney